THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.25059 of 2005

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Dated:15.12.2005

Between:

Mrs. Sajja Bharathi Krishna Kumari, W/o. Late S. Srinivasa Rao
R/o. H.No.74-32-17 Damera Nagar
Vijayawada.

..... PETITIONER

AND

The Commissioner Vijayawada Municipal Corporation
Vijayawada, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.25059 of 2005

ORDER:

The petitioner is the owner of house bearing No.74-32-17, Damera Nagar, Vijayawada. The house was initially constructed by her husband. After demise of her husband, the petitioner and her two sons succeeded to the property, and living in the house for the last 14 years. She alleges that the third respondent is raising a multistoried building in premises No.74-31/2-12/1, without leaving the setbacks as required under law. She also alleges that the third respondent raised the construction beyond permissible floor area ratio, and as a result, the Air Condition plant constructed by the third respondent is opening into the petitioner's building. So to say, the Air Condition ducts are protruding into the petitioner's property as there is no space in his plot, and the windows on the east, if opened, the shutters are encroaching into the petitioner's building. The petitioner, therefore, gave a complaint on 16.08.2005 to respondent Nos.1 and 2, in vain. Hence the present writ petition is filed seeking, *inter alia,* a direction to respondent Nos.1 and 2 to take action against the third respondent and his agents to remove the illegal constructions and the protruding shutters and ducts of Air Condition plant.

At the stage of admission itself, the learned Assistant Government Pleader for the Vijayawada Municipal Corporation (VMC) has filed a detailed counter affidavit. It is stated that VMC has issued a notice to the third respondent under Section 452 of the Hyderabad Municipal Corporations, Act, 1955 (for short 'the HMC Act') pointing out the deviations with respect to the setbacks, and the third respondent was prosecuted by imposing a fine of Rs.5,000/- and Rs.2,000/- in S.T.C. Nos.254 and 255 of 2005 respectively. The allegation of the petitioner that VMC did not take any action is therefore, denied. It is further stated that the petitioner herself constructed building abutting the western side boundary, without leaving any side open space, against which, the third respondent gave a complaint on 02.09.2005 requesting VMC to take action against the petitioner. Even before the Corporation could look into these complaints and counter complaints by the petitioner and the third respondent, the present writ petition is filed. It is further stated in the counter affidavit that VMC is initiating necessary action against the petitioner and also the third respondent in accordance with law.

The petitioner herein admittedly gave a complaint on 16.08.2005, and the third respondent gave a complaint on 02.09.2005. This writ petition was filed on 23.11.2005, even before VMC could take any action. As the Commissioner of VMC has now come forward stating that necessary action is being initiated against arraigning individuals, who contravened the building permission and building bye-laws, this Court refrains from making any observations on the allegations made by the petitioner against the third respondent or on the allegations made by VMC against the petitioner herself. These matters are to be gone into by VMC after obtaining necessary explanations after issuing notices under Section 452(1) of the HMC Act. The respondent-Corporation may immediately take action against the third respondent and/or the petitioner as well, if there is any deviation by them, in accordance with law.

The Writ Petition, with the above observations, is disposed of. No costs.

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(V.V.S.RAO, J)

15.12.2005

vs